INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	4
Conclusion	7
Appendix	9–12

CITATIONS

Cases:	
Costanzo v. *Tillinghast*, 287 U.S. 341	7
Interstate Commerce Commission v. *New York, N. H. & H. R. Co.*, 287 U.S. 178	7
Massachusetts Mutual Life Ins. Co. v. *United States*, 288 U.S. 269	7
Reed, Ex parte, 100 U.S. 13	6
Statutes:	
Act of June 1, 1922, c. 204, 42 Stat. 599, 603	11, 12
Act of January 3, 1923, c. 21, Title I, 42 Stat. 1068, 1072 (U.S.C., Title 46, Sec. 680)	10
Act of January 25, 1929, c. 102, 45 Stat. 1094, 1098	11
Act of May 7, 1930, c. 227, 46 Stat. 261 (U.S.C. Sup. VI, Title 46, Sec. 679	6
Revised Statutes:	
Sec. 1752 (U.S.C., Title 22, Sec. 132)	6
Sec. 4577 (U.S.C., Title 46, Sec. 678)	11
Sec. 4578 (U.S.C., Title 46, Sec. 679)	9
Sec. 4579 (U.S.C., Title 46, Sec. 681)	10
Miscellaneous:	
Consular Regulations, March 1928, XVI–3, 4	6
Consular Regulations, February 1931:	
XV-12, 13, 14	6
XVI-1, 2	6
3 Comp. Gen. 148	5
4 Comp. Gen. 118	5
4 Comp. Gen. 252	5
4 Comp. Gen. 390	5
4 Comp. Gen. 483	5
4 Comp. Gen. 632	5
5 Comp. Gen. 623	5
6 Comp. Gen. 723	5
7 Comp. Gen. 3	5
7 Comp. Gen. 363	5
8 Comp. Gen. 194	5

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 954

ALASKA STEAMSHIP COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 51–54) is reported in 60 F. (2d) 135. The opinion of the Circuit Court of Appeals (R. 69–78) is reported in 63 F. (2d) 398.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 13, 1933 (R. 79). The petition for certiorari was filed May 10, 1933. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether under the statutes and regulations providing for the return to this country of destitute or shipwrecked seamen, a vessel owner is entitled to recover from the Government compensation for transporting on one of its own vessels the crew of another vessel owned and operated by it, which had become disabled in Alaska.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 9–12.

STATEMENT

This was a suit to recover compensation for the transporation of shipwrecked seamen from Alaska to the United States. Trial by jury was waived by a written stipulation (R. 16). The District Court rendered a memorandum opinion which by order of the court was to be entered also as its findings of fact and conclusions of law (R. 54). The findings of fact of the District Court (R. 51–53) may be summarized as follows:

In December 1929 the S.S. *Depere*, owned and operated by petitioner, was wrecked on the southeastern coast of Alaska and was unable to proceed on its voyage. Its crew of thirty-five seamen was taken to Ketchikan, Alaska, where the customs office, by the deputy collector of that port, provided

subsistence for the crew. (R. 51.) The deputy collector arranged with the master of the S.S. *Yukon,* also owned and operated by petitioner, to transport the crew from Ketchikan to the port of Seattle, Washington, the *Depere's* debarking port. He agreed that the sum of $13.24 for each seaman, or a total of $397.20, should be paid for the transportation of the shipwrecked crew. (R. 51.) The crew was transported in the *Yukon* to Seattle and their landing at that place was certified by the United States Collector of Customs at Seattle. Thereafter, petitioner transmitted to the Treasury Department of the United States, together with a statement of account for the transportation, the certificate issued by the deputy collector at Ketchikan authorizing the transportation and providing for compensation. (R. 51–52.) Payment of the compensation provided for by the certificate was denied by the Comptroller General on the ground that:

> The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty (R. 52).

The shipping articles contained provisions that the seamen were bound to serve for a term of time not exceeding two months on a cruise to Alaskan and Canadian ports and return to a final port of discharge in the United States; benefits accruing to

the seamen under the articles were wages, maintenance, and medical attendance and cure during the voyage, and also the right to be returned to a port of the United States (R. 52–53).

The District Court dismissed the petition (R. 17), on the ground that the owner of a vessel could not claim reimbursement for the expense of returning the crew of one of its vessels by another of its own ships (R. 54). The Circuit Court of Appeals affirmed the judgment of the District Court (R. 79), but on the ground that the certificate sued upon was issued by a deputy collector of customs not authorized by statute to issue certificates for the transportation of destitute and shipwrecked seamen (R. 77–78).

ARGUMENT

Petitioner contends that the statutes providing that distressed American seamen should be repatriated at the expense of the Government, upon certificates issued by Government agents at the ports in which the destitute seamen are found, apply not only to foreign ports, but also to ports in Alaska and other Territories and possessions of the United States. This view was rejected by the court below on the ground that no provision was made for the issuance of certificates except by consular agents. In the instant case the seamen for whose transportation petitioner now sues, were shipwrecked on the coast of Alaska. Since there are no consular agents of the United States in

Alaskan ports, the court below held that there was no authority in any Government officer in that Territory to arrange for repatriation of the crew of the S.S. *Depere* or to bind the Government to compensate for their transportation.

We consider it unnecessary to examine the question whether, in general, provision has been made by Congress for paying the expenses of repatriation from Alaska of destitute American seamen. In the present case the transported seamen had been employees of petitioner on a vessel owned and operated by it; their transportation from Ketchikan, Alaska, to Seattle, Washington, was by another vessel owned and operated by petitioner. The District Court held in these circumstances that the owner of a vessel meeting with disaster should not be allowed compensation for returning the crew to a port in the United States by another of its vessels. This conclusion, while not approved by the Circuit Court of Appeals, is, we submit, correct.

The conclusion of the District Court is in harmony with the construction placed upon the statutes by the Comptroller General, the officer charged with the duty of making disbursements from the appropriation set apart by Congress to fulfill the purposes of the statute. See 3 Comp. Gen. 148; 4 Comp. Gen. 118; 4 Comp. Gen. 252; 4 Comp. Gen. 390; 4 Comp. Gen. 483; 4 Comp. Gen. 632; 5 Comp. Gen. 623; 6 Comp. Gen. 723; 7 Comp. Gen. 3; 7 Comp. Gen. 363; 8 Comp. Gen. 194. Moreover, the

Consular Regulations of the United States,[1] affecting the performance of duties by consuls and consular agents and containing directions concerning the issuance of certificates for compensation, have recognized the force of these rulings and are in accord with them. See Consular Regulations, March 1928, XVI-3, 4; and see also Consular Regulations, February 1931, XV-12, 13, 14; XVI-1, 2. The rulings of the Comptroller General and the Consular Regulations determine the limitations within which the controlling appropriations may be disbursed. They determine that the liability of the United States for the transportation of shipwrecked seamen is dependent upon a condition of distress or destitution which cannot exist if the owner of the shipwrecked vessel is in a position to furnish the transportation necessary to repatriate the crew of one of its own shipwrecked vessels.[2]

Subsequent to the promulgation of these rulings Congress by the Act of May 7, 1930, c. 227, 46 Stat. 261 (U.S.C. Sup. VI, Title 46, Sec. 679), reenacted the previously related statutes respecting compen-

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[1] Consular Regulations are issued by the President under authority of R.S., Sec. 1752 (U.S.C., Title 22, Sec. 132), and have the force of law. Cf. *Ex parte Reed*, 100 U.S. 13, 22.

[2] While there is testimony in the record that in 1909 or 1910 and in 1918, payments were made to petitioner as compensation for repatriating the crews of ships owned and operated by it (R. 39), there is no finding to this effect. Nor is there any indication that the alleged payments were made with full knowledge of all the facts bearing on the liability of the Government. So far as we are advised, there

sation of vessels for transporting seamen. The consistent construction and administration of these statutes by the officers charged with their application should be regarded, in view of the reenactment of the legislation, as an authoritative interpretation. See *Massachusetts Mutual Life Ins. Co.* v. *United States,* 288 U.S. 269, 273; *Costanzo* v. *Tillinghast,* 287 U.S. 341, 345; *Interstate Commerce Commission* v. *New York, N. H. & H. R. Co.,* 287 U.S. 178, 190.

There is no dispute concerning petitioner's ownership and operation of both the shipwrecked vessel and the vessel upon which the shipwrecked crew was transported to Seattle. We contend that the Comptroller General properly refused to compensate petitioner for the performance of services for which it was primarily liable, and that the result reached by the court below was correct.

CONCLUSION

The question presented by the petition is not necessary to a decision of the case, and it does not seem to be of general importance. It is conceded

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is no instance wherein there has been recognition of the right of an owner of a vessel on which destitute seamen last served to collect from the United States the expenses of their repatriation; on the contrary, we are informed that in every case, except in a case of established desertion (3 Comp. Gen. 936), the accounting officers of the Government have held that the owner may not recover on such a claim under the seamen relief appropriations.

that there are no conflicting decisions. We submit that the result reached below was correct and that the petition for certiorari should be denied.

Respectfully submitted.

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JUNE 1933.

APPENDIX

STATUTES INVOLVED

Sec. 4578, Revised Statutes, as amended (U.S.C., Title 46, Sec. 679):

> *Transportation of destitute seamen to United States.*—All masters of vessels of the United States, and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound, on such terms, not exceeding $10 for each person for voyages of not more than thirty days, and not exceeding $20 for each person for longer voyages, as may be agreed between the master and the consular officer, when the transportation is by a sailing vessel; and said consular officer shall issue certificates for such transportation, which certificates shall be assignable for collection. If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall be paid as the Comptroller General of the United States shall deem proper. Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of $100 for each

seaman so refused. The certificate of any such consular officer, given under his hand and official seal, shall be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage or to take any seaman having a contagious disease.

Act of January 3, 1923, c. 21, Title I, 42 Stat. 1072 (U.S.C., Title 46, Sec. 680):

That hereafter the amount agreed upon between the consular officer and the master of the vessel in each individual case not in excess of the lowest passenger rate of such vessel and not in excess of 2 cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate for transportation on steam vessels.

Sec. 4579, Revised Statutes, as amended (U.S.C., Title 46, Sec. 681):

Additional allowance for transportation of destitute seamen.—Whenever distressed seamen of the United States are transported from foreign ports where there is no consular officer of the United States, to ports of the United States, there shall be allowed to the master or owner of each vessel, in which they are transported, such reasonable compensation, in addition to the allowance now fixed by law, as shall be deemed equitable by the Comptroller General of the United States.

Sec. 4577, Revised Statutes, as amended (U.S.C., Title 46, Sec. 678):

> *Subsistence to destitute seamen; return to United States.*—It shall be the duty of the consuls and vice consuls, from time to time, to provide for the seamen of the United States, who may be found destitute within their disfricts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give. The seamen shall, if able, be bound to do duty on board the vessels in which they may be transported, according to their several abilities.

Appropriation Acts providing relief for shipwrecked American seamen on the coast of Alaska have been enacted annually since 1896. Except in 1922 and 1923, the provisions of these Appropriation Acts with respect to the Territory of Alaska have been substantially the same. The Act making appropriations for the Department of State for the fiscal year ending June 30, 1930, approved January 25, 1929 (c. 102, 45 Stat. 1098), reads:

> For relief, protection, and burial of American seamen in foreign countries, in the Panama Canal Zone, and in the Philippine Islands, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, in Porto Rico, and in the Virgin Islands, $70,000.

The similar appropriations made in 1922 and 1923 (c. 204, 42 Stat. 603; c. 21, 42 Stat. 1072), save for the amount, contain a proviso not appearing in

previous or later Appropriation Acts, the Act approved June 1, 1922, reading as follows:

> For relief and protection of American seamen in foreign countries, and in the Panama Canal Zone, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $220,000; *Provided,* That no part of this appropriation shall be available for payment for the transportation on steam vessels of any seamen in excess of the amount agreed upon between the consular officer and the master of the vessel in each individual case; and hereafter the amount so agreed upon not in excess of the lowest passenger rate of such vessel and not in excess of 2 cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate.

U. S. GOVERNMENT PRINTING OFFICE: 1933